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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention
of Discrimination and
Protection of Minorities
Forty-second session
Agend item 15

DISCRIMINATION AGAINST INDIGENOUS PEOPLES

Written Statement submitted by Human Rights Advocates,
a non-governmental organization in consultative status
(Category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[15 August 1990]

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DESTRUCTION OF THE RAIN FOREST IN SARAWAK, MALAYSIA, AND THE PENAN, AN INDIGENOUS PEOPLE IN PERIL

I. INTRODUCTION

1. The Penan are a people in peril. This indigenous people of Sarawak, Malaysia, in northern Borneo is risking its existence in an attempt to preserve its hereditary lands from deforestation by Malaysian and foreign logging companies. It is currently losing the battle. Consequently, it is estimated that within several months the nomadic Penan will exist no more: the Penan section of the Sarawak rain forest will be destroyed, its timber cut and sold for export, and the nomadic Penan will be forced to migrate to long houses in scattered roadside shanty towns.

II. BACKGROUND AND STATEMENT OF FACTS

2. The Penan are among the last truly nomadic rain forest people, whose culture extends back thousands of years. The Penan are master ecologists and the original inhabitants of the earth's oldest and richest forest.

3. Yet, the Malaysian Government is one of the world's most serious offenders with regard to the destruction of rain forest lands. Malaysia openly encourages the logging industry which exports heavily to the Japanese timber cartel. The Penan have been fighting to save their land and their way of life for the past several years: their struggle has been non-violent and has consisted primarily in creating human blockades to stop the spread of logging roads. None the less, today, there is no corner of Penan territory not threatened by logging. The State's allowance of unfettered harvest of timber has led to the relocation of indigenous people in long houses, in roadside shanty towns, and has forced them to turn to non-traditional agricultural practices.

4. The Malaysian human rights group Sahabat Alam Malaysia (SAM), and United States organizations, such as the Endangered Peoples Project and the Congressional Human Rights Foundation, have documented the fact that indigenous peoples, especially the Penan who rely on the forests and rivers for their livelihood, are being forced to forage in smaller and smaller areas for food and water - much of which is contaminated. This has resulted in malnutrition never before experienced by these indigenous people, the spread of many infectious diseases, an unusually high level of birth defects, and diseases related to the use and addiction of sugar, alcohol, and tobacco.

5. The despair of the Penan continues to grow as their forest and rivers, the source of their livelihood, continue to be degraded and destroyed by logging activities. Inadequate food and medical care further diminish their emotional strength.

6. Appeals by these indigenous people to the authorities continue to be ignored, the courts are slow to hear customary law claims, last-ditch blockades are harshly dealt with, and international efforts to date have resulted in an increase in logging operations (in some contested areas, hauling has actually increased to 3-shift, 24-hour operations). Included with the deforestation of tropical forests is the loss of plants that offer promise in research for new medicines.

7. The livelihood and culture of the indigenous people is destroyed through these logging and resettlement activities, and no action is taken by the State or Federal Governments to prevent this destruction. These abuses have been documented and repeatedly brought to the attention of the Governments of Sarawak and Malaysia, but have been ignored or dismissed. The Sarawak Government continues to provide licenses to timber companies to log lands necessary for the survival of the Penan. The Government's authorization of continued, unfettered logging of their lands has resulted, and will continue to result in, human rights violations as discussed below.

III. LEGAL ANALYSIS

A. International law of human rights

Right to life (Universal Declaration of Human Rights, article 3)

8. Food sources for the nomadic Penan are dwindling as more and more of the rain forests are cleared by efforts now continuing 24 hours a day. The Sarawak and Malaysian Governments' authorization and/or acquiescence in these activities indicates a reckless disregard for the survival of the Penan as a nomadic people and violates the universally recognized right to life.

Right to health and welfare (Universal Declaration of Human Rights, article 25 (1))

9. In no case may a people be deprived of its own means of subsistence. The only means of survival of the nomadic Penan is the forest in which they dwell. It is the forest that provides them with their food, shelter, medical necessities, and cultural artifacts. The destruction of this habitat is the sure destruction of the Penan's health and well-being.

Right to culture and protection of cultural heritage (Universal Declaration of Human Rights, articles 22 and 27)

10. If logging of the rain forest in Sarawak continues at the current rate, the Penan's nomadic culture will literally be destroyed in a few years. They will have no forest in which to live in the ways of their ancestors. They will be forced to change their nomadic life-style to accommodate Western interests in a life heretofore unknown to them: life in shanty towns at the edge of a cleared forest. The State's authorization of and/or acquiescence in the logging of this forest to its destruction, and to the destruction of the Penan culture, is a violation of the Penan's right to protection of their cultural heritage.

The Right to be free from discrimination (Universal Declaration of Human Rights, article 7)

11. The land laws and policies of the Government of Malaysia and the State of Sarawak discriminate against the Penan on the basis of culture. The Government has disregarded the rights of the Penan to pursue their nomadic existence in the rain forest in permitting local and foreign timber companies to continue logging. In none of these decisions were the Penan allowed to participate, even though these lands are indispensable to the existence of the Penan and to the protection of their culture.

READEX FICHE

Right to be free from the arbitrary deprivation of property (Universal Declaration of Human Rights, article 17)

12. While the Penan are nomadic and do not "own" property pursuant to most Western legal understandings, they have customary rights to their lands. The Penan have occupied a specific area of the forest, and have used this area for rights of way and as burial grounds for their people. The Penan also depend entirely on the forest ecosystem for their daily subsistence. The State has not protected their customary rights to these lands, nor provided just compensation for the taking of the Penan forest area, in violation of its own laws and its international legal responsibilities.

Involuntary resettlement (Universal Declaration of Human Rights, articles 13 and 17)

13. The Penan's ability to move freely throughout their forest dwelling has been severely constrained by logging, and within several months will be made impossible by the clearing of their forest. Furthermore, the Penan are prohibited by the Government to move about and dwell within designated "parklands", formerly their ancestral lands. The imminent destruction of the area of the rain forest in which they have now been confined will result in the total loss of their movement about their homeland.

B. International law of natural resources and human rights

14. The close relationship between human rights and the environment is borne out by the fate of the Penan. While the right of the State to exploit its natural resources is internationally recognized, this right does not enable the State to do so in a manner which violates the human rights of its people. It must provide for the welfare of its people, including its indigenous population. The taking of the Penan forests, even if the Government were to provide monetary compensation, would not compensate for the emotional and cultural losses to these people. Compensation may not be an adequate means to re-establish the standard of living of the nomadic Penan or to provide for their welfare.

15. The Stockholm Declaration of 1972 recognizes the right of all people to a healthy subsistence - adequate food and safe water. In addition the Declaration requires that human settlements and urbanization must be planned with a view to avoiding adverse effects on the environment and obtaining maximum social, economic and environmental benefits for all.

16. The World Charter for Nature requires that any activity likely to pose a significant risk to nature must be preceded by an exhaustive examination of these risks. Not only does the destruction of the rain forest threaten the habitat and species in the forests, but the unfettered logging now sanctioned by the State causes massive soil erosion which jeopardizes the rivers and drinking water of the indigenous peoples of Sarawak.

17. The Malaysian Government has rejected attempts by the Penan to classify their forests as a protected Biosphere Reserve. An International Biosphere Reserve is a recent addition to categories for Conservation Area Management recognized by the 1984 International Union for the Conservation of Nature and

Natural Resources (IUCN). The concept originated within the UNESCO Man and the Biosphere Program (MAB), and over the last decade it has become a central feature of MAB. The Penan area qualifies as a protected area under the IUCN.

IV. RECOMMENDATIONS TO THE SUB-COMMISSION

18. Taking the critical situation of the Penan people into consideration, Human Rights Advocates, in conjunction with the Natural Heritage Institute, respectfully urges the Sub-Commission to consider the following recommendations:

1. To appoint a special rapporteur to investigate the human rights abuses of the Penan and other tribal peoples from logging the rain forest in Sarawak, Malaysia, and from other forms of environmental degradation;

2. To call upon the Malaysian Government to redress these violations, and to urgently protect the nomadic Penan and their rain forest; and

3. To call upon all nations to support the designation of an International Biosphere Reserve for the protection of the Penan and other indigenous tribes.

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Agenda item 4

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[17 August 1990]

Protection of journalists

1. Human Rights Advocates (HRA), in consultation with article 19, Centre on Censorship, commends Mr. Sadi for his excellent report on protection of journalists (E/CN.4/Sub.2/1990/17). We take this opportunity to offer suggestions for further study as well as additional information on the dangers to which journalists who attempt to report gross violations are subjected.

2. HRA and article 19 endorse Mr. Sadi's conclusions that: (1) journalists play an important role in exposing human rights violations around the world; (2) journalists engaged in such activity are particularly at risk; (3) intergovernmental organizations have devoted inadequate attention to protecting journalists; (4) the United Nations human rights bodies should endeavour to extend protection to journalists and media workers; and (5) the Sub-Commission is well-placed to assume a leading role in such an endeavour.

3. HRA and article 19 believe that the most useful action the Sub-Commission could take would be to ask Mr. Sadi to collect information on instances of persecution of journalists, particularly those engaged in human rights reporting. A further step would be to invite him to address questions to Governments concerning reliable reports of such instances.

4. An important initial step would be to invite the Special Rapporteur to propose the kinds of persecution that would fall within his mandate. At a minimum such acts presumably would include all cases of murder, disappearance, attack, threatened attack, abduction, and detention, not only by Governments but also by irregular armed groups and drug traffickers (see Commission on Human Rights resolution 1990/75 of 7 March 1990, para. 2).

5. Journalists may also be pressured into refraining from human rights reporting by other, somewhat more subtle, though often as effective measures. These include: restrictions on movement; for non-nationals, expulsion from the country or denial of entry; revocation or denial of a licence; and job harassment, such as dismissal or demotion if a government employee, and measures aimed at forcing dismissal or resignation if a private employee. Journalists may also be punished or pressured by acts directed at the media outlet that employs them, such as: closure or seizure of a newspaper, radio or television office; confiscation of publications; seizure or destruction of property; and revocation or non-renewal of a radio or television licence.

6. Another important question for the Rapporteur to address is whether all journalists should be subject to his mandate or only those who allegedly have been persecuted for their human rights reporting. We recommend that, if called on to address the question, the Rapporteur should assume that any alleged persecution is motivated by the journalist's efforts to engage in human rights reporting unless the Government produces convincing evidence to the contrary.

7. HRA and article 19 further recommend that the Rapporteur be requested to identify patterns of abuse. Information collected by non-governmental organizations suggests that journalists are at particular risk when they (1) report on armed conflict situations; (2) report information or write an opinion piece that supports one side of a contentious issue; or (3) report on corruption of, or human rights abuses committed by the Government or a government agency such as a police department, an irregular armed group, or drug traffickers.

8. Identifying such patterns will be of use in formulating international standards, perhaps in the form of a declaration, on special protections to which journalists are entitled.

9. Finally, the Rapporteur could be asked to identify the protections Governments should be required to afford journalists. Some of these protections will be ones that Governments are obliged to provide all persons within their jurisdictions. The most important such obligation may be the duty to investigate attacks and threatened attacks, and to prosecute and punish fully those identified as bearing responsibility. It appears that many of the most serious attacks on journalists - namely, murders and disappearances - are not committed by the Government but rather by irregular armed groups or drug traffickers. Nonetheless, government failure to conduct

rigorous investigations serves to undermine journalists' rights to life and security of the person as surely as does direct government commission of violations.

10. Governments furthermore may owe a special duty to journalists to permit them to enter conflict zones. This duty, if it were to be articulated, might be based on the importance of human rights reporting as a means of monitoring, and thus discouraging, abuses during periods when abuses are particularly likely to be committed. This duty would, of course, include the duty not to harass journalists found within or seeking entry into conflict zones, such as by confiscating their equipment, detaining them, or interrogating them.

11. Another interest of journalists that Governments may be obliged to respect is the right not to reveal the identity of their sources save in extraordinary circumstances. The right is necessary, particularly if reporters are to be able to gather information on corruption and abuses by Governments and armed groups, since without recognition of such a right, sources are likely not to disclose information out of fear of intimidation or attack.

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Forty-second session
Agenda item 19

THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY

Written statement submitted by the International League for Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[20 August 1990]

Draft declaration on the right to leave and return

1. We commend the Working Group for beginning the review of Special Rapporteur Mubanga-Chipoya's draft declaration, though it had been our hope that there would be allotted to this subject more than the very brief time available to it at this session. We hope that next year, there will be sufficient time to complete the review of all the articles and that the Sub-Commission will be able to forward to the Commission an agreed text.

2. In that review, we assume that it will take into account the several draft declarations annexed to the Special Rapporteur's final report (E/CN.4/Sub.2/1988/35 and Add.1/Corr.1) and the constructive suggestions in the Secretary-General's analytic compilation of comments on the draft declaration.

3. The following are brief comments on several views expressed in the Working Group, and previously in some written communications to the Sub-Commission (E/CN.4/Sub.2/1990/47).

4. We disagree strongly with the suggestion of including in various provisions of the declaration, language determining the right to leave a country on its compatibility with national legislation. Similar suggestions, as we know, have been made in the past in regard also to other human rights. These suggestions are, of course, incompatible with the very premise of international human rights. They are tantamount to saying that the right to leave, and other international human rights, are rights unless a country's laws or regulations say they are not. It is well to remember that suggestions in this vein were overwhelmingly rejected when the Universal Declaration of Human Rights was being drafted. As UNESCO pointed out in comments submitted to the Secretary-General, if a suggestion of this nature had been incorporated, the State could nullify any right by enacting inconsistent legislation or adopting restrictive executive measures.

5. Some have suggested that the right to leave is no longer a significant problem in view of the recent changes in Eastern Europe, and also that it is meaningless if the prospective emigrant cannot enter another country - and therefore the declaration should include a "right" to enter in the sense of immigration. In our view, this suggestion is mistaken - and simplistic.

6. To begin with, it is mistaken because the problem of leaving a country persists in many places. An example can be found in the report not long ago of a Commission on Human Rights mission to a certain country which found that, of a total of about 2,400 separate human rights violations reported to the mission, 1,182 concerned the right to leave. Prohibitions against and impediments to the exercise of this right persist also in other countries. In short, the Commission on Human Rights was closer to the mark last year when, in preambular paragraph 8 of resolution 1989/39, it noted that "many people are still denied the right to leave their country or to return to it."

7. Moreover, international human rights norms are not addressed only to existing situations and conditions but to the longer future and, as history unhappily demonstrates, existing positive patterns can deteriorate sharply and suddenly.

8. As to the suggestion of a right to enter in the sense of immigration, in an ideal world people might have the right to enter as well as the right to leave. However, ours is less than an ideal world and its limitations are mirrored in international law, which can venture a little bit ahead of existing realities, but not too far ahead. The present reality is that international human rights law, as expressed in the Universal Declaration of Human Rights, the Covenants and other international and regional agreements, does recognize the right to leave and return as fundamental, subject to certain permissible restrictions. However, it does not recognize a

corresponding right to enter; that is, a right to immigrate. Nor do national constitutions and laws recognize such a right. As for its advocates, is it this they truly seek or rather to confuse the dialogue and impede the effort to affirm and clarify the right to leave?

9. Of course, countries should be encouraged and urged to institute more humane, more equitable, more generous immigration policies. They should be pressed to apply more conscientiously the limited protections international law does accord presently to refugees, including the right of non-refoulement. But the reference in the draft declaration's article 7 to the right to enter any country is unrealistic and unhelpful. It should be omitted.

10. We welcome the inclusion in draft article 7 of specific provisions clarifying the circumstances under which limitations may be imposed upon the right to leave. Such specificity is an important means of deterring governmental abuse of the limitations clauses.

11. We believe that the Special Rapporteur's draft article 4, regarding the brain drain, may be open to the interpretation that the brain drain constitutes a legitimate basis for denying the right to leave. In our view it should be deleted, as proposed by several Working Group members, or re-formulated so as to preclude any such interpretation.

12. In conclusion, we hope that the Working Group will complete next year its review and enable the Sub-Commission to fulfil the Commission's request to submit to it a draft declaration "as soon as possible". We commend to the attention of the Working Group as a model the text of the declaration elaborated by the eminent group of legal experts that met in Strasbourg, France, in 1986, which text, with minor modifications, has been endorsed by the International Institute of Human Rights, the Inter-American Institute of Human Rights, the Jacob Blaustein Institute for the Advancement of Human Rights, the Messina Center for Sociological, Penal and Penitentiary Studies and the International League for Human Rights.

13. The adoption by the Sub-Commission of draft principles detailing the content of the right to leave and return along the lines of the Special Rapporteur's text, with the modifications suggested by these human rights organizations, and by others, including Governments and inter-governmental and non-governmental organizations which commented in a similar vein in communications to the Secretary-General, would be a much-needed advance in the international protection of this essential right.

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Forty-second session
Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by Human Rights Advocates, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[20 August 1990]

The protection of journalists

1. In his brief but provocative report on protection of journalists (E/CN.4/Sub.2/1990/17), Mr. Sadi notes the particular importance of collecting complete information about human rights violations during situations of armed conflict and emphasizes the extreme risk journalists face during such situations. Relatedly, Mr. Türk and Mr. Joinet, in their thoughtful report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1990/11), discuss the various sanctions Governments impose against individuals and media outlets for exercising the right to freedom of expression.

2. Human Rights Advocates and Article 19, Centre on Censorship, in this intervention provide information concerning attacks on journalists committed during armed conflict situations in 1989 and the first half of 1990. We also provide information about other, often equally grave threats to journalistic freedom committed outside the context of armed conflicts.

3. Much of our information was reported to us by other non-governmental organizations, in particular the Committee to Protect Journalists, the International Federation of Journalists, International PEN, and Reporters Sans Frontières. All, including Article 19, strive to help protect journalists by calling on Governments to take appropriate action whenever their rights are violated and by publicizing threats to and attacks on journalists.

4. The cases reported are illustrative only and by no means constitute a comprehensive list of all attacks on journalists or all forms of interference with journalistic freedom.

Killings and disappearances of journalists

5. During 1989, at least 53 journalists were killed or disappeared in situations that suggested that the motive was to stop them from pursuing their professional duties. Of those, 40 were killed or disappeared in countries racked by internal armed conflict, namely Bangladesh, Colombia, El Salavador, Ethiopia, Guatemala, Pakistan, Panama, Peru, Philippines, Somalia and Sri Lanka. Of the 53, fewer than 10 were mentioned in the reports of the Working Group on Disappearances or the Special Rapporteur on Summary or Arbitrary Executions. In the first half of 1990, at least 28 journalists were killed. Following are summaries of some of the cases.

Killings during armed conflict situations

6. In El Salvador, at least 14 journalists were killed or disappeared during 1989, more than in any other country. Some appear to have been killed by the military, others by the querrillas, and still others in crossfire or unclear situations. The Government fostered a climate of fear by arbitrarily detaining and searching dozens of journalists, restricting travel, and engaging in other forms of intimidation of the media.

7. In Sindh, Pakistan, three journalists were killed in May and June 1990. Two who worked for Urdu-langauge papers are believed to have been killed by Sindhi militants. In Peshawar, Mansoor Khan died on 3 July after being doused in acid, reportedly by Afghan mujahideen extremists for his reporting of the Afghan civil war.

8. In Peru, at least five journalists were murdered during 1989. The armed leftist group Senero Luminoso appeared responsible for least one murder. Disturbingly Government authorities appear actively to have covered up possible security force complicity in the 1988 murder of journalist Hugo Bustios. The killing of one witness to the murder and the intimidation of others prompted the Inter-American Court of Human Rights to take the unusual step of ordering the Government to protect the remaining witnesses.

9. In the Philippines, at least one journalist was killed during 1989, possibly by the Communist New People's Army. Through July 1990 another three journalists were killed.

10. In Sri Lanka, at least four journalists and the son of a fifth were murdered during 1989 by militant groups.

Killings by Governments or police

11. At least one photographer, Chen Laishun, was killed by Chinese troops on 4 June 1989 as he was climbing down from a roof where he had gone to take pictures.

12. On 15 March 1990, Iraq executed Farzad Bazoft, a British journalist of Iranian birth. After being accused of spying for Israel he confessed on television, reportedly under duress. Bazoft had been invited by Iraq to cover elections in Kurdistan.

13. In February 1990, well-known Sri Lankan television journalist Richard de Zoysa was taken from his mother's arms and murdered. His mother has named a Colombo police superintendent as being involved. The Attorney-General has not yet decided whether to prosecute the case. Many human rights groups are calling for an independent commission of inquiry if the Attorney-General does not proceed with rigour.

Killings and threats by drug traffickers

14. In Colombia in 1989, 11 journalists were killed, most of them by drug traffickers. At least 3 bombs were placed at radio and newspaper offices, killing at least 2 persons, wounding 80, and destroying the offices of a daily paper. Leftist rebels are accused of having kidnapped reporters on at least one occasion in 1989 and of having killed a radio journalist in February 1990. Three other journalists were killed in 1990.

15. In Mexico on 6 June 1990, Alfredo Cordova Solorzano was fatally shot apparently for his reporting on drug traffickers. Local press groups complained that police harassed journalists trying to cover the case. Beginning on 15 June 1990, Jorge Castaneda was threatened with physical attack, apparently for having accused the anti-narcotics squad of the Federal Judicial Police of human rights abuses. Castaneda criticized the Government for creating a climate in which such intimidation could occur.

Killings by other non-governmental entities

16. In Soweto, South Africa, Sam Mabe, editor of the Sowetan daily newspaper and former vice-president of the Media Workers Association of South Africa, was shot dead on 4 July 1990, apparently because of his work on behalf of press freedom. The same day, a bomb exploded at the offices of Vrye Weekblad in Johannesburg and its editor received threats.

17. In Turkey, Cetin Emec, a leading columnist and former Editor-in-Chief of the daily Hurrivet, was killed on 7 March 1990 along with his driver, reportedly by extremists who had more than once threatened him for his "anti-Islamic" and pro-democracy views.

Detention

18. International PEN published a report in April 1990 describing the cases of 186 journalists arrested between August 1989 and April 1990. Reporters Sans Frontières has files on some 140 journalists detained around the world as of 15 July 1990.

19. In China, more than two dozen journalists were arrested in the last half of 1989 and several more in 1990. Fifteen reportedly remained in prison as of 31 May 1990, in addition to such long-term detainees as Wei Jingsheng, arrested in 1979. Several remain in prison in Tibet for their involvement in publishing unofficial journals during the liberalization of the late 1970s. Tseten Norgye was arrested and reportedly tortured in Tibet in April or May 1989 for printing materials advocating Tibetan independence.

20. In Kenya, Gitobu Imanyara was arrested on 5 July 1990 along with some 10 others who had been calling for legalization of opposition political parties. Imanyara is a lawyer, journalist, editor of a monthly journal critical of the Government's human rights record, and a board member of Article 19. He was released but re-arrested of 26 July for sedition based on recent articles advocating multi-party elections, and for having failed to submit the articles for governmental approval before publication. He was freed on bail several days later.

21. In Iraq, censorship and intimidation are so pervasive that it is difficult to verify the cases of journalists detained or even executed. Publication of statements deemed insulting to the President or holding beliefs opposed to those of the ruling Ba'th Party are punishable by death. Publication of statements that "injure" the President, the revolution, its ideology, or the Republic, or that propagate imperialism, separatism, or Zionist or racial opinions are punishable by imprisonment, confiscation of offending issues, or closure of the publication.

22. In Sudan, dozens of journalists were arrested and detained without charge following the 30 June 1989 coup, of whom at least nine reportedly remained in detention as of April 1990.

23. In Turkey as of 4 June 1990, 34 journalists reportedly were serving a total of 2,703 years in prison. On 15 June another 28 were detained in Ankara on their way to delivering a petition protesting the lack of press freedom. In April and May 1990, decrees 413 and 424 were issued prohibiting stories on Kurdish unrest not based on Government sources or which "threaten law and order". Under the decrees, on 27 June the director of a popular newsweekly was sentenced to 25 years, the editor of a magazine was awaiting trial, and both publications were banned.

Censorship, closure of newspapers and dismissal of journalists

24. The Committee to Protect Journalists documented more than 50 confiscations or bannings of publications during 1989. Since the coup in Sudan on 30 June 1989, the military Government closed down virtually all non-government controlled newspapers and magazines. The Government regularly suppresses information about human rights abuses, such as the massacre of 2,000 civilians by militia and governmental troops in Jabalain in December 1989. Government suppression of information on famine and the spread of AIDS has resulted in massive violation of economic and health rights.

25. At least eight periodicals were closed in Viet Nam during 1988 and 1989 for violating publishing laws. Editors of at least another six publications were forced into early retirement.

26. In Kosovo province, Yugoslavia, the Albanian-language radio and television station was occupied and closed on 5 July 1990 and all 1,400 employees were dismissed. On 5 August, the major Albanian-language newspaper was closed.

Restrictions on freedom of movement

27. The Committee to Protect Journalists reports that some 55 working journalists were expelled from countries during 1989, the bulk of them from China (12), Comoros (16), Ethiopia (3), Romania (3), and Sri Lanka (6). Journalists were also expelled from and denied entry to Afghanistan, Botswana, China, Cuba, Ethiopia, Grenada, Israel and the Occupied Territories, Myanmar, Nicaragua, the Democratic People's Republic of Korea, Pakistan, Panama, Singapore, the United States of America and the Union of Soviet Socialist Republics.

28. The major method by which Governments are able to keep journalists from reporting on human rights violations during armed conflicts is by excluding them from conflict areas.

29. Israel routinely denies journalists access to areas declared closed military zones and has charged and fined journalists who entered those areas. At least two Palestinian journalists were administratively detained during 1989, one for up to a year.

30. During the United States invasion of Panama in December 1989, the US Command restricted the US "press pool" to US bases, attempted to bar all non-pool journalists from entering the country and journalists already in Panama from entering conflict zones, and detained and harassed journalists trying to cover the invasion.

31. Human Rights Advocates and Article 19 suggest that the above incidents make clear the need for further United Nations action to protect and assist journalists and mass media personnel, particularly those engaged in reporting on human rights violations. Governments should be called on to release journalists detained solely for pursuing their professional duties, to repeal laws that criminalize reporting on certain events or expression of certain views, to investigate and prosecute vigorously all attacks on journalists, to permit newspapers and radio and television stations to operate freely, and to refrain from interfering with journalists' freedom of movement. Mr. Sadi, Mr. Türk and Mr. Joinet should be invited to propose concrete measures the United Nations might undertake to help protect journalists and other media personnel.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the International Educational Development, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[21 August 1990]

QUESTION OF VIOLATIONS OF HUMAN RIGHTS

1. International Educational Development (IED) wishes to draw to the attention of the Sub-Commission the critical situation of human rights in Kashmir.

GE.90-17380/7378A

2. We have undertaken an independent investigation of the situation and have met with a number of Kashmiris and non-Kashmiri people who have recently been in the area and whose safety is of great concern.

3. In the course of our work, we have been greatly assisted by the excellent reports of recent missions by prominent Indian human rights organizations, especially the report Situation in Kashmir: an Indian Report, signed by Rajinder Sacher, M. Tarkunde and six others representing the People's Union for Civil Liberties, the Citizens for Democracy, the Radical Humanist Association and the Manav Ekta Abhiyan; Kashmir Under Siege; Massive Violations of Human Rights, reporting on a mission of Mr. Justice A.S. Bains, Major General Narinder Singh (ret.) and two others; and India's Kashmir War, reporting on a mission of the Delhi-based Committee for Initiative in Kashmir.

4. The origin of the current crisis dates from the British withdrawal from colonial India, when the people of Kashmir, granted internal autonomy under British rule, were to chose whether to remain autonomous or to join with either India or Pakistan. It was expected that Kashmir, a Muslim-majority area, would elect to remain independent. However, at the time of election, the Maharajah was Hindu, and he signed an instrument of accession to India in exchange for the entry of Indian troops to put down the Azad Kashmir movement seeking independence and avidly supported by the people. The Azad Kashmir forces resisted the Indian army, and by late 1947 controlled one third of what India called the State of Jammu and Kashmir.

5. The United Nations addressed the situation at the beginning of 1948, and in April of that year the Security Council passed a resolution setting up a process leading to a plebiscite of the Kashmiri people to determine their status. Both India and Pakistan agreed to the process, and in 1948 and 1949 the United Nations Commission for India and Pakistan, set up by Security Council resolution 39/1948, adopted two resolutions mandating a cease-fire and the withdrawal of troops (resolution of 13 August 1948) and a plebiscite to determine the accession of the State of Jammu and Kashmir (resolution of 5 January 1949). Admiral Chester Nimitz (United States of America) was appointed Plebiscite Administrator.

6. Between 1950 and 1957, United Nations representatives General MacNaughton (Canada), Owen Dixon (Australia), Frank Graham (United States of America) and Gunnar Jarring (Sweden) were unable to obtain agreement for the demilitarization of Jammu and Kashmir so as to be able to hold a free plebiscite. The situation became increasingly more tense during the "cold war" period, as Pakistan became party to military pacts sponsored by the United States of America and the Security Council was unable to act. Several wars between India and Pakistan took place in this period because of, inter alia, the Kashmir question. In 1972, the Simla Agreement signed by Indira Ghandi (India) and Zulfikar Ali Bhutto (Pakistan), committed both countries to reach "a final settlement of Jammu and Kashmir ...", as yet unfulfilled. Both countries find themselves in August 1990 poised for yet another war in Kashmir.

7. Meanwhile, the aspirations of the people of Kashmir have been strangled, and the Government of India has answered any movement towards autonomy or independence with, at best, indifference and increasingly with severe repression and violence. All three missions cited here as well as our own

confidential fact-finders were eye-witnesses to numerous serious human rights violations and listened to countless testimony from Muslim and non-Muslim Kashmiris indicating a severe pattern of gross violations of human rights throughout the region.

8. Rather than quash the Kashmiri demands for independence, however, the Indian repression has generated renewed resolve and militancy among Kashmiris. As stated in Situation in Kashmir: an Indian Report:

> "When pointed out by some of our members that by and large all the people's movements in Soviet Republics ... have been peaceful and non-violent and that could be considered as one major factor for their success, the people in the valley listened to this observation carefully. But they say that the Government was not allowing peaceful processions and demonstrations and therefore the militants were gaining respectability in the eyes of the common people. They criticized violence on the part of the State which they said must come to an end to bring about non-violence."

9. All three of the cited reports indicate that the mission members found that the overwhelming majority of Kashmiri people, including some of the non-Muslim minority groups, favour independence from either India or Pakistan and the immediate carrying out of the plebiscite promised long ago. Our investigation confirms this conclusion. We cite conclusions reached by two of the missions:

> "It would be very difficult to find in the majority community of the Kashmir valley anyone who does not passionately desire complete independence from India. Even local J and K police and the local administration stand completely alienated from the para-military forces on the one hand and the Government of Jagmohan on the other ... Though deafening slogans were dinned into our ears wherever we went, yet we did not hear a single pro-Pakistan slogan." Situation in Kashmir: an Indian Report.

> "The team after scrutiny of the evidence of persons of every walk of life ... has reached the following conclusions: the current situation in Kashmir valley is on account of mass upsurge of the entire Muslim population, which is in overwhelming majority against India. They are totally united for liberation from India. This movement is totally indigenous. The vast majority are for independence." Kashmir Under Siege: Massive Violations of Human Rights.

10. IED urges the international community to work in any way it can to assist in the fulfilment of the promises made to the Kashmiri people by the United Nations and by the Governments of India and Pakistan. In particular, we ask the Sub-Commission to request the Secretary-General to undertake efforts to bring the parties into a productive dialogue so as to carry out in the immediate future the plebiscite authorized by the United Nations.

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Sub-Commission on Prevention
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Forty-second session
Agenda item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the ROMANI UNION, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[21 August 1990]

ROMANI UNION

1. The Romani Union, representing over 15 million Roma (Gypsies, Sinti, etc.) all over the world through their national and regional organisations, must again stress that, despite the progress made, there is still a lot of prejudice to overcome and genocide attempts to prevent!

2. In all countries live different racial groups and gradually, in unity in diversity, including the Roma with their culture and language, humankind advances towards a multi-racial global society in which the Roma live and also bring their valuable contribution towards world order.

3. Hopefully soon freed from human rights violations, we should strive towards a world commonwealth uniting all nations, with a world legislature with representatives elected by and dedicated to humankind, and an international force and a world tribunal to safeguard peaceful unity in diversity for all.

4. Racism being the cause for constant human rights violations against Roma everywhere, we wish to quote from The Promise of World Peace:

> "Racism, one of the most baneful and persistent evils, is a major barrier to peace. Its practice perpetrates too outrageous a violation of the dignity of human beings to be countenanced under any pretext. Racism retards the unfoldment of the boundless potentialities of its victims, corrupts its perpetrators, and blights human progress. Recognition of the oneness of mankind, implemented by appropriate legal measures, must be universally upheld if this problem is to be overcome" (The Promise of World Peace, a statement by the Universal House of Justice, Bahá'í World Centre, p. 10, ISBN 085398-216-3).

5. Roma still suffer from one of the most dangerous of prejudices: the one arising from differences of race or skin colour. It leads to human rights violations, social unrest, war and even genocide.

6. It is increasingly recognized that each human being has wonderful innate capacities which only require a suitable environment and education for their development for the benefit of society as a whole.

7. After the recent developments in Eastern Europe, the Roma there enjoy more freedom, have their own parties and their members of parliament.

8. In this significant moment of history in which we live, while the family of nations shows, most encouragingly, greater co-operation than ever before, much progress must still be made so that the limited resources of our planet be wisely administrated internationally by representatives really dedicated to humankind!

9. Among all its members, the Romani Union uses its own international auxiliary language: an example which the nations of the world might soon wish to follow and thus contribute to reducing human rights violations.

10. The Romani Union is most heartfeltly grateful to all who actively contribute to overcoming all prejudice and so prevent further human rights violations, thus making our planet earth a safe and happy place also for our children and for all future generations.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the Friends of the Earth International, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[21 August 1990]

Apartheid and the environment

1. The system of apartheid in South Africa oppresses that nation's majority population in innumerable ways. Among the most serious, but hard to recognize, costs of apartheid are the damage caused to the environment of South Africa's blacks, whites, and the rest of the world by the operation of that inefficient and inequitable system. South Africa can only start to heal its self-inflicted environmental wounds with the dismantling of apartheid and the restoration of full democracy.

2. The roots of South Africa's current environmental problems are present in many countries, but apartheid has aggravated these problems and created new ones. For example, the environmental damage caused by South Africa's mining industries is exacerbated both by the apartheid régime's reliance on those industries for cash to support racial separation and the fact that blacks, who have little power, are disproportionately victimized by the industry's poisoning of the environment. Additionally, apartheid is the cause of damage caused by overcrowding of the "homelands", over-reliance on coal, production of synthetic fuels, and scorched-earth warfare against neighbouring countries.

3. With the Land Act of 1913, South Africa's Dutch settlers relegated its black population to only 13 per cent of the land area, in 10 "native reserves". Four of these areas were declared by apartheid to be semi-autonomous "homelands". In reality, the "homelands" are an excuse for crowding blacks into remote, barren regions entirely dependent on South Africa for economic survival. To begin with, the "homelands" have thin topsoil, scarce rainfall and sloping, rocky ground. Onto this poor land are crowded over half of South Africa's 29 million blacks. An example of the extent of the overcrowding is the Qwa Qwa reserve. During World War I the Government judged that that region's agricultural carrying capacity was exceeded by its 5,000 inhabitants. Over 500,000 people are forced to live there now. The land degradation has been so great that a decade ago the Government's Ciskei Commission estimated that 46 per cent of the land in the Ciskei reserve was moderately or severely eroded and 39 per cent of its pastures were overgrazed. The overcrowding in the "homelands" is also destroying those regions' forests, which the inhabitants consume for fuel wood. The Energy Research Institute at the University of Capetown has predicted that at current population growth rates, natural woodlands will be almost entirely denuded by the year 2020.

4. With 85 per cent of its commercial energy coming from coal, South Africa is more than twice as dependent on coal as is typical for other nations. Although South Africa has abundant coal deposits, the key to its over-reliance on coal is found in both the nation's pool of grossly underpaid and mistreated black labourers, and the hostility of oil-exporting nations to apartheid. With its coal industry subsidized by the 85,000 blacks who work in the mines for about one-tenth the wages of British miners, South Africa has been ripping apart its land with strip mines. At the same time, air pollution from coal-fired power stations without sulphur-removing stack scrubbers is among the worst in the world. One estimate of sulphur dioxide emissions is a staggering 57 tons per square kilometre per year. By contrast, the rate for badly polluted East Germany is 30 tons. South Africa has also embarked on a wasteful campaign to produce synthetic fuels from coal in order to achieve energy independence. Among other impacts, synthetic fuel production increases carbon emissions per unit of fuel and creates concentrated hazardous wastes.

5. In the 1970s South Africa developed a policy of destabilizing its neighbouring countries to prevent them from effectively opposing apartheid. In this war-by-proxy, South Africa used surrogate armies in Angola and Mozambique to destabilize the Governments. These armies have been practising scorched-earth warfare against their respective countries' peasants, devastating agricultural land and driving millions of people into camps on urban fringes. The overcrowding causes still more damage. For example, Mozambique's capital of Maputo is surrounded by a 55 kilometre-wide barren area, deforested by people taking fuel wood. The wars have also meant tragedy

for wildlife. Since 1984 it has become clear that Mozambique's and Angola's elephant herds are being destroyed by the armies, which sell ivory to pay for arms.

6. This overview of the ecological harm caused by apartheid to South Africa's people and the rest of the world can only begin to describe the catastrophe. The example of apartheid shows that social injustice breeds environmental harm which in turn aggravates that injustice. South Africa's majority population must be restored to full citizenship, and South Africa's environment must be managed so as to benefit all its people.

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Agenda Item 6

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[24 August 1990]

1. The International Federation of Human Rights (IFHR) and its affiliated members, the Swiss League for Human Rights and the French League for Human Rights, wish to draw the Sub-Commission's attention to a particularly serious incident which occurred on 24 April last, some 20 km from the exact spot we are on today. On that day, Mr. Kazem Radjavi was assassinated. On reading this name, a great many people present at this session, whether experts or members of governmental or non-governmental delegations, will recall the face of a man who was present so often within these walls, and will hear the voice which he raised with strength and courage against human rights violations perpetrated in Iran. He had devoted his life to the campaign for human rights in Iran, and we heard him here, once again, at the previous session of the Commission on Human Rights last March, vigorously criticizing Mr. Galindo Pohl's report, which he considered too lenient towards his country, whose practices in violation of human rights are well known to us and were well known to him. His tenacity and his stubbornness in going around the

world stating and reiterating how many men and women suffered repression, disappeared in prison, died under torture or were summarily executed in Iran, were the cause of his death. A representative of the Iranian resistance, he acted unflaggingly as the voice of the unheard, and journalists accredited to this forum know how much precise and reliable information Kazem Radjavi possessed concerning the situation in Iran and the fate of those who resisted. This man, a member of the Swiss League of Human Rights, was particularly well aware of what he spoke about: he had campaigned, under the Shah, against the death sentence against his brother, Massoud Radjavi, imprisoned for eight years and today President of the National Resistance Council of Iran and leader of the Mojahedin; his brother-in-law and sister were executed by the Khomeiny régime. Because of his struggle for human dignity and his refusal to compromise, he himself had been, in turn, a political refugee in Switzerland, then ambassador here, to the United Nations, of the first Government of the Republic of Iran, and then once more a political refugee in Switzerland. He knew that he was threatened, but his latest bitter denunciations of Mr. Galindo Pohl's report will have hastened his execution. Indignation and condemnation of that terrorist act against a man of justice appeared in the entire world press. The voice of Kazem Radjavi has been silenced but, true to the cause he upheld, the cause of human rights common to us all here, we denounce his murder, a barbarous act if ever there was one, which runs completely counter to international human rights law.

2. The International Federation of Human Rights and several of its affiliated leagues, numerous non-governmental organizations, the European Parliament, the Council of Europe and the United States Congress have condemned this political assassination perpetrated on the order of the Iranian Government. The report by the police of the canton of Vaud (Switzerland) enables us to hold the Iranian Government responsible for this wrongful death; moreover, the press release of 22 June 1990 issued by the examining magistrate of the canton of Vaud, Mr. Chatelain, states:

> "Although the investigation is not complete, it has been shown that several persons are closely implicated in this affair. It was initially established that the persons named Yadollah Samadi and Mohammad Said Rezvani were suspected of this murder, but investigations have revealed that 13 persons were involved (...).

3. The 13 persons involved were all issued with Iranian service passports, bearing the words "on mission". Some of these documents were issued on the same dates at Tehran. Most of these persons entered Switzerland together, by direct Iran Air flights from Tehran to Geneva, and were in possession of air tickets bearing consecutive serial numbers (...).

4. At the present stage, the police officers in charge of the investigation have assembled various data which make it possible to state that one or more official Iranian departments are directly implicated in the assassination of Mr. Kazem Radjavi (...)."

5. Furthermore, Maître Henri Leclerc, one of the French lawyers of the Radjavi family and Vice-President of the French League for Human Rights, analyses some of the evidence of the case in a letter dated 30 July 1990 addressed to the President of the International Federation of Human Rights:

"It is true that arrest warrants were issued for all the perpetrators identified, both in Switzerland and abroad; but although it has been established that two Iranian diplomats accused by the Iranian resistance movements of having been entrusted with supervising this assassination were indeed in Geneva at the time of the crime, and that they had left Switzerland for Tehran on the day of the assassination by a direct Iran Air flight, it appears from the dossier that Interpol in Tehran ventured to affirm in reply to questions that the suspects were unknown to them, that their whereabouts were not known and that they had entered Switzerland not from Iran but from Iraq, since they were no doubt Mojahedin dissidents. This contradicts the entire dossier, and it is quite clear that the Swiss police will obtain no further information from Iran (...).

6. Another factor appears quite clear in the dossier: that those who came to carry out this assassination took practically no precautions, and in my view the Iranian agents behaved in Switzerland extremely casually as if they wanted the whole world to know that this assassination had been carried out by Iranian agents.

7. It is interesting to note that the crime was organized, and the service passports issued, in Iran just before two Swiss citizens were taken hostage in Lebanon.

8. It is also interesting to note that the assassins left long-peaked caps at the scene of the crime, as they had done previously when a deserting Iranian pilot, Moradi Talebi, was assassinated on 10 August 1987. Identical caps had likewise been found following the attack which cost the lives of three Iranians at Vienna, including Abdelrahman Ghassemelou, the head of the Iranian Kurdish resistance. The consequence of this veritable signature is that the Swiss State protests no more than the Austrian State against such State crimes organized on its territory."

9. Being aware of all these factors, we cannot let this session pass without denouncing this assassination and without requesting the Sub-Commission to take into consideration today the criticisms made by Kazem Radjavi about the report submitted by Mr. Galindo Pohl to the Commission on Human Rights at its previous session. His death is concrete proof that Iran is today not confining itself to internal repression but is exporting terrorism beyond its borders, in killing, not far away from this forum, one of its opponents, that indefatigable defender of human rights Kazem Radjavi, to whom we pay tribute.

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THE NEW INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS

Written statement submitted by the International Commission for Health Professionals, for health and human rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[27 August 1990]

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Americans with Disabilities Act
Statutory Deadlines

I. Employment

The ADA requirements become effective on:

- 26 July 1992, for employers with 25 or more employees.
- 26 July 1994, for employers with 15-24 employees.

II. Public accommodations

The ADA requirements become effective on:

- 26 January 1992, generally.
- 26 August 1990, for purchase or lease of new vehicles that are required to be accessible.
- 26 January 1993, for new construction.

Generally, lawsuits may not be filed until 26 January 1992. In addition, except with respect to alterations, no lawsuit may be filed until:

- 26 July 1992, against businesses with 25 or fewer employees and gross receipts of $1 million or less.
- 26 January 1993, against businesses with 10 or fewer employees and gross receipts of $500,000 or less.

III. Transportation

A. Public bus systems

The ADA requirements become effective on:

- 26 January 1992, generally.
- 26 August 1990, for purchase or lease of new buses.

B. Public rail systems - light, rapid, commuter, and intercity (Amtrak) rail

The ADA requirements become effective on:

- 26 January 1992, generally.
- 26 August 1990, for purchase or lease of new rail vehicles.

By 26 July 1995, one car per train accessibility must be achieved.

By 26 July 1993, existing key stations in rapid, light, and commuter rail systems must be made accessible with extensions of up to 20 years (30 years, in some cases, for rapid and light rail).

C. Privately operated bus and van companies

The ADA requirements become effective on:

- 26 January 1992, generally.
- 26 July 1996 (26 July 1997, for small providers) for purchase of new over-the-road buses.
- 26 August 1990, for purchase or lease of certain new vehicles (other than over-the-road buses).

IV. State and local government operations

The ADA requirements become effective on:

- 26 January 1992.

V. Telecommunications

The ADA requirements become effective on:

- 26 July 1993, for provision of relay services.

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For more information on the ADA contact:

United States Department of Justice
Civil Rights Division
Co-ordination and Review Section
P.O. Box 66118
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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH
THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by the International Educational Development Inc., a non-governmental organization in consultative status on the Roster

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[29 August 1990]

HUMAN RIGHTS IN TIMES OF ARMED CONFLICTS

1. The Commission on Human Rights, by its resolution 1990/66, requested the Sub-Commission to address the issue of human rights in times of armed conflicts with a view to making proposals to the Commission for further action in this field (operative para. 6).

2. International Educational Development wishes to draw to the attention of the Sub-Commission certain points which, in our experience, contribute to an understanding of the application of humanitarian law and to efforts to re-establish peaceful resolution of disputes that have deteriorated into armed conflicts.

3. Humanitarian law applies when the objective conditions for armed conflict exist, irrespective of whether either the parties to the conflict or the international community approve of the reasons for the armed conflict or the political implications of it. The armed conflict may be international or internal. For instance, in the internal armed conflict in Sri Lanka, humanitarian law rules apply irrespective of whether the international community approves of the reasons for Tamil dissatisfaction with the Sinhala-controlled Government's policies or whether it approves of the fact that the Tamil community has chosen, as a last resort, the use of force to defend their demands.

4. In internal armed conflict governed by either customary international humanitarian law or article 3 common to the Geneva Conventions of 1949 or Additional Protocol II, both the opposition forces or armed bands and the governmental armed forces have all the rights of humanitarian law rules. This right includes the right to carry out military operations in conformity with the general rules of armed conflict. For example, in Sri Lanka, both the government forces and the armed forces of the Liberation Tigers of Tamil Eelam have the right to carry out military operations against all legal military targets.

5. In internal armed conflicts, the parties to the conflict have all the obligations of armed conflict law rules. The obligations include the obligations to respect the rights of the civilian population and prisoners of war. For example, in Sri Lanka, both the governmental and the opposition armed forces must respect the protection of hospitals, schools and civilian population centres. The military operations in that conflict directed at Moolai and Manipay hospitals must be viewed as grave breaches of humanitarian law. The fact that the Liberation Tigers of Tamil Eelam have held captured members of the army or military police forces as prisoners of war is not a violation of the rules of armed conflict. Fleeing prisoners who shoot risk being the target of legitimate military operations against them. The fact that the LTTE has turned over some captured combatants to the International Committee of the Red Cross or other humanitarian organizations does not alter either the obligation of the LTTE to protect POW rights or the right of the LTTE to hold POWs.

6. The failure of the international community to acknowledge the rights of combatants in internal armed conflict or to hold both the Government and opposition combatants to full respect for the rules of war has, unfortunately, prolonged some internal armed conflicts. The international community tends to favour one side or the other, and either supports or condemns the reasons for the armed conflict, rather than recognize the obvious - that armed conflict exists and will continue as long as the affected peoples feel that their only hope for betterment of the situation is through military means. In Sri Lanka, for example, the Tamil population, with its obvious support for the Tamil militants, indicates that it is willing to endure the consequences of armed conflict to gain its aspirations which it describes in terms of full human rights and self-determination. The continuance of the armed conflict merely feeds these aspirations. On the other hand, the Government feels that rather than address the aspirations of the Tamil people, it will overcome them by military annihilation. As long as the international community attempts to deny the "legitimacy" of one side or the other, it will not be able to contribute to a peaceful resolution of the conflict.

7. During armed conflicts, Governments may invoke article 4 of the International Covenant on Civil and Political Rights and suspend or derogate from some of the recognized rights. However, no State may suspend or derogate from those rights identified as non-derogable. The international community should pay close attention to the application of article 4, including the obligation of strict exigency. Governments frequently use the excuse of an armed conflict to sweep away all human rights law protections, especially for those civilian people that it considers aligned with the "enemy".

8. International Educational Development acknowledges that war is the lowest form of human interaction and that the first victim of armed conflict is the truth. For this reason, we encourage the international community to study all aspects of humanitarian law and its relationship to human rights law. We also encourage caution and careful checking from all possible sources before accusing one side or the other in any armed conflict.

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THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the International Commission of Jurists, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 August 1990]

1. The International Commission of Jurists considers that the debate on the realization of economic, social and cultural rights should not ignore environmental questions. The report on the Global Consultation on the Realization of the Right to Development as a Human Right recognized the pre-eminence of environmental issues in the following terms: "The world's future can only be ensured if the global environment is adequately protected and restored."

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2. Accordingly we suggest that the Special Rapporteur carefully consider, as the International Commission of Jurists has, the concise Note prepared by Mme Ksentini on human rights and the environment (E/CN.4/Sub.2/1990/12). The Note usefully catalogues a vast range of conceptual, legal, and environmental issues which should be the subject of future study.

3. The existence of the right to a clean, healthy and safe environment is recognized in a number of international instruments cited by the Special Rapporteur, including the Stockholm Declaration, article 24 of the African Charter on Human and Peoples Rights, article 11 of the Protocol to the American Convention on Human Rights, as well as many other instruments, resolutions and multilateral treaties.

4. The Note recognizes that the human rights dimension of global environmental protection issues can assist in the efforts to achieve an ecologically sustainable future, one of the crucial issues facing humankind.

5. The General Assembly, recognizing that decisive, urgent and global action is vital to protecting the ecological balance, has convened a world conference in Brazil in 1992. In doing so, the Assembly identified a range of important issues relevant to the survival of the planet, namely: protection of the atmosphere, of freshwater resources, of the oceans and seas, and of land resources; conservation of biological diversity; environmentally-sound management of biotechnology and wastes; improvement oi the environment of the poor in urban slums and rural areas through the eradication of poverty; and protection of human health conditions and improvement of the quality of life.

6. An underlying theme discernible in many of these matters, particularly relevant to the Special Rapporteur on the realization of economic, social and cultural rights, is the complex relationship between inappropriate development practices, the economic stress caused by the international debt régime and environmental degradation.

7. This cycle must be broken. Any future study by the Sub-Commission should aim at injecting a human rights component into the deliberations at the 1992 Brazil Conference. It must, therefore, be carefully designed and structured. It should be practical and avoid theoretical and abstract questions. In general practical terms, an important factor supporting the human rights approach to current environmental issues is that human rights contribute to an effective, well-established relationship between the individual and the State. The full enjoyment of human rights, including democratic control over resources and democratic and participatory decision-making, naturally fosters a sound ecosystem. On the contrary, violations of general human rights lead to environmental degradation. It is because local populations have no effective voice that Governments and transnational corporations may dump wastes and test weapons on their lands and seas.

8. Take, for example, the United States Atomic Testing Program conducted in the Marshall Islands following World War II. The decisions relating to these tests were taken in Washington in furtherance of United States strategic interests. The consequential environmental damage to the Micronesian territories is, in some cases, irreparable. The damage to local economies is catastrophic. In human and environmental terms, the tests were a disaster.

9. It is particularly encouraging in this regard that the Note recognizes the essential role of individuals and groups in protecting the environment. Environmental protection measures adopted to deal with the present crisis must incorporate effective procedures for fully informed decision-making at the relevant levels. It is evident that the present processes of decision-making have not led to environmentally-sound policies and practices. Access to national and international adjudicative processes needs to be more effective. In this respect we draw attention to the Report of the NGO conference "Bridging the Gap", held on the Danube in the spring of 1990 in preparation for the Bergen Conference, attended by over 350 NGOs competent in the field of environmental protection. The conference concluded, notably, that "Every individual, group or organization shall have a right to participate in the formulation of all decisions likely to affect his or its environment" and that "the mechanisms for public participation and the scope of participation should be adapted to the nature of the decisions being made and those who may be affected by the decision". The role of NGOs is significant not only in the process of determining environmentally-sound policies, but also in monitoring and implementation.

10. The accumulated experience of the United Nations human rights implementation machinery needs to be used firstly by accelerating action in relation to violations which may have an adverse environmental impact, and secondly by using that experience to suggest implementation procedures for any instruments which emerge from the Brazil conference.

11. We would also like to comment on the reference in the Note to self-determination and indigenous peoples.

12. It is an unfortunately widespread situation that, where the effective decision-makers are not representative of, or accountable to, the owners and occupiers of the relevant territory, commitment to sound environmental management is lacking: violation of the right to self-determination, through the plundering mentality of colonial and transnational forces, inevitably leads to environmental problems.

13. In Australia, to cite but one example, considerable environmental degradation occurs as a result of massive deforestation combined with short-sighted agricultural practices, properly described as soil mining. The fragile Australian ecosystem was sustained for more than 40,000 years of indigenous territorial occupation, ownership and control. Yet in the 200 years since the arrival of European colonizing forces, environmental catastrophes have occurred.

14. Of particular relevance in this respect are two of the rights found in the draft universal declaration on indigenous rights (E/CN.4/Sub.2/AC.4/1990/1):

> "16. The right to a safe and healthy environment and the right to the protection of the environmental integrity of the land and other territories and resources traditionally occupied or otherwise used by indigenous peoples.";
>
> "17. The right to require that non-indigenous authorities and other parties, including transnational corporations, request and obtain the free and genuine consent of the indigenous people concerned prior to the commencement of any project directly related to indigenous lands and other territories and resources."

15. We must not forget that indigenous peoples, globally, possess or constitute a vast repository of environmental wisdom; their rights to determine matters pertaining to their own territories must be respected for the benefit of all humankind.

16. We believe that if the Special Rapporteur is able to concentrate at an early stage on these discrete areas, then the Sub-Commission will play a useful part in setting new international standards in the field of human rights and environmental protection.

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HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Written statement submitted by the National Aboriginal & Islander Legal Services Secretariat, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 August 1990]

1. We have read with considerable interest the proposals for a study of the problem of the environment and its relation to human rights prepared by Ms. Ksentini (E/CN.4/Sub.2/1990/12).

2. From the perspective of an indigenous NGO, we are pleased to note that the rights of indigenous peoples are considered significant in an examination of human rights violations as causes of, or factors in, the deterioration of the environment (para. 33(c)).

3. Since time immemorial, indigenous peoples have lived in harmony with nature. Our ownership and management of our territories and resources have always been based on a profound respect for mother earth. This relationship of nurturing, patience and moderation was disrupted by the coming of strangers whose relationship to the natural environment is one of exploitation. Economic growth, competition for the control and extraction of resources, an

ever increasing demand for energy resources, national integrationist policies and the East-West conflict have had calamitous consequences for our traditional territories. Attempts to defend our rights have always been opposed by the full force of the State apparatus, including military might. The present situation of our brothers and sisters of the Mohawk nation is an illustration of the extremely racist and violent responses we encounter in our struggles to defend our territories and control our destinies. We have been forced to watch helplessly as our resources have been plundered, our territories devastated by pollution of all kinds and our traditional ways of life and means of subsistence destroyed.

4. A study of the problem of the environment and its relationship to human rights may benefit from consideration of the sorts of human rights violations which arise from different approaches to the ownership and management of land and resources. In particular, it is suggested that the beneficial consequences of traditional indigenous approaches to the environment and the human rights violations which arise when those approaches are not respected be subject to close examination.

5. In this connection, we note that Ms. Ksentini's note refers to ILO Convention No. 169. We would remind the Sub-Commission that an overwhelming majority of indigenous peoples reject as totally inadequate the standards articulated in that Convention. From the outset it was clear that ILO Convention 169 would have to distance itself from a subject outside the limited mandate of the ILO. The Convention was always intended as a short-term minimum guarantee of rights to be superseded by the declaration on the rights of indigenous peoples presently under elaboration in this Sub-Commission's Working Group on indigenous peoples. It is that text, as revised by the informal drafting groups which met in Geneva this year, to which reference must be had in the preparation of any study by a member of this Sub-Commission.

6. We were also pleased to see that Ms. Ksentini's note draws attention to the harmful environmental repercussions of the denial of the right of peoples to self-determination and to freely dispose of their resources (para. 33(a)).

7. Indigenous peoples are extremely aware of the destruction, deterioration and pollution of our territories, air, water, sea, ice, wildlife and other resources to which the denial of our right to self-determination has led. In Australia, for example, from 1953 to 1965, the British Government carried out a series of "major" atomic tests on aboriginal land in the deserts at Maralinga and Emu fields and a number of "minor" tests which involved the dispersal of plutonium and other toxic materials over a wide area. One of these "minor" tests involved the explosion of a 98 kiloton bomb - 10 times larger than that dropped on Hiroshima. Over 1,000 aboriginal persons remained in the test areas. The land at Maralinga remains unfit for human habitation until this day. Similarly, aboriginal groups from Northern Queensland are presently engaged in a fierce struggle to prevent the construction of a space port on their traditional lands at Cape York. It is feared that the construction of a space base on these lands will lead to irreparable environmental damage, not only to traditional aboriginal sites but also to critical marine and fauna resources including fish, prawn, crab, turtle and dugong breeding grounds.

8. For aboriginal and islander peoples all around Australia, the denial of real control over our lives and destinies has led to the desecration of our traditional territories and prevented the pursuit of our traditional ways of life. It is commonplace that the denial of the right to self-determination leads to the violation of many other human rights; in this connection, inter alia, the right to a safe and healthy environment. At Barvugil on the north coast of New South Wales, for example, asbestos mining was conducted without any warning of the dangers of asbestos being given to miners from the local aboriginal community. Whilst the majority of the local Bunjaluna community was relocated in 1980, to this day only three aboriginal men have received compensation for having contracted asbestos-related diseases, no compensation has been granted for the contamination and loss of traditional lands and six-year old recommendations of a parliamentary select committee to decontaminate and revegetate the mine area have not been implemented. Such "tardiness" of responsible authorities prompted the Federal Race Commissioner to comment in July of this year on the "gross disregard for the human rights" of local residents and to conclude that "the residents of Barvugil can hardly be blamed for concluding that their aboriginality has been a factor in the apparent reluctance of responsible authorities".

9. Also in the case of East Timor, it is evident that the denial to a people of its right to self-determination is almost invariably accompanied by devastating environmental consequences. Timber companies have literally denuded East Timor of its precious sandalwood without any attention being given to reafforestation. This has led to severe erosion and impoverishment of the soil. As part of the Indonesian military strategy of flushing out resistance forces from the forests in the mountains, large areas once covered with luxuriant tropical forests have also been rendered completely useless.

10. NAILSS calls upon the Sub-Commission to take appropriate measures to encourage the Government of Indonesia to refrain from further destruction of the sacred territories of the indigenous people of East Timor. We know from our own painful history that the denial to a people of its right to self-determination leads not only to the destruction of its environment, but also to a serious threat to its survival as a people. The people of East Timor find themselves at the beginning of the same tragic experiment we have endured for two centuries. This process can be reversed now through effective action by this Sub-Commission and other United Nations agencies to ensure that the people of East Timor exercise their inalienable right to self-determination.

11. The Sub-Commission must also give serious consideration to its role in preventing the South Pacific region becoming a dumping ground for United States, Japanese and European hazardous chemicals. Whilst we support the recent decision of the United States to destroy chemical weapons stockpiled in West Germany, we deplore the selection of a facility in our region as the site for their incineration. There is now abundant evidence of the potential catastrophic hazards of shipment, the substantial dangers of incineration and the existence of much safer methods of disposal. We understand that despite Secretary Cheney's assurances to Heads of government at the South Pacific Forum, Congress is making plans to adopt a bill allowing the transport of additional chemical weapons stockpiles in the United States to Johnston atoll. The use of the South Pacific as the world's toxic waste incinerator involves a most serious violation of the right of the many peoples of the region to self-determination and must not be tolerated by this Sub-Commission.

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ENCOURAGEMENT OF UNIVERSAL ACCEPTANCE OF HUMAN RIGHTS INSTRUMENTS

Written statement submitted by the International Human Rights Law Group, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 August 1990]

1. As a primary part of its mandate, the International Human Rights Law Group works throughout the world to encourage commitment and adherence to the human rights instruments established by the United Nations. The Law Group would like to bring to the Sub-Commission's attention several examples of areas where the Sub-Commission could encourage acceptance of human rights instruments.

2. The United Kingdom automatically assumed an obligation to ensure the protection of certain international human rights in Hong Kong when it ratified the International Covenant on Civil and Political Rights (ICCPR) and the Covenant on Economic, Social and Cultural Rights (ICESCR) in 1976. More than 14 years later, however, the United Kingdom through the Government of Hong Kong

has failed to fully implement the rights specified in the Covenants in that Crown Colony. On the contrary, freedom of political expression is stifled and participation in activities supporting democracy in the People's Republic of China is discouraged.

3. The Draft Bill of Rights pending before the Hong Kong Legislative Council closely follows the language of the ICCPR. If passed, it could provide considerably more protection against infringement of political rights and freedom of expression rights then Hong Kong law presently affords. However, the Bill of Rights may not effectively safeguard human rights in Hong Kong following the United Kingdom's imminent transferral of control of Hong Kong to the People's Republic of China. The basic law of China establishing its relationship with Hong Kong after 1997 provides that Chinese law prevail in cases of conflict between the law of Hong Kong and that of China. Although the basic law provides that the International Covenants should remain in force after 1997, no means are provided for accession to the instruments by the People's Republic of China on behalf of Hong Kong following withdrawal by the United Kingdom.

4. The lamentable record of the People's Republic of China in failing to respect internationally guaranteed human rights, particularly those of political participation and freedom of expression, makes strengthening adherence to human rights instruments even more urgent.

5. To ensure the recently-achieved human rights and freedoms for the people of Nepal, ratification of major human rights agreements is essential. In this regard, the Law Group is pleased to note that the Prime Minister of Nepal has stated publicly his Government's intention to become a party to the International Covenant on Civil and Political Rights. The Law Group welcomes the measures being taken by the interim Government of Nepal for the encouragement of universal acceptance of human rights instruments. The effective and immediate implementation of such instruments by incorporation into domestic laws is equally essential.

6. As Nepal moves from an absolute monarchy to a multi-party democracy, it confronts several issues related to the encouragement of human rights in the country. One of those issues is the investigation of past human rights abuses and punishment of those accountable for killings and torture, particularly of those participating in the last spring's pro-democracy movement. The interim Government has established a commission to investigate the killings of pro-democracy demonstrators but has failed to draw up specific rules and procedures to regulate the conduct of such an investigation. The need for independence and impartiality of the commission in its jurisdiction, methods of investigation and authority to punish those found guilty are critical to effective administration of its mandate. Internationally accepted principles in punishing former government officials are established in the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted by the Economic and Social Council on 24 May 1989.

7. The commitment of the United States of America to the protection of civil and political rights has its origins in its Declaration of Independence, written in 1776. Despite its long-standing commitment to civil and political rights, the United States has been slow to ratify even the most basic international human rights instruments.

8. In the United States, treaties are first signed by the President. After a treaty is signed the State Department presents the Senate with a priority list of treaties for their consideration. If the treaty passes the review of the Senate Foreign Relations Committee within the Senate, it is brought before the full Senate for final ratification. However, some major human rights treaties have been waiting review by the Senate Committee for the past 11 years. These treaties include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covention on the Elimination of All Forms of Racial Discrimination and the American Convention on Human Rights, an Organization of American States' treaty. The last hearings on these treaties were held in 1979.

9. The Law Group has been encouraged by the recent United States ratification of the Convention on the Prevention and Punishment of the Crime of Genocide and by the progress made in consideration of the Convencion on the Elimination of All Forms of Discrimination against Women. The Senate Committee recently passed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The danger remains, however, that broad reservations will be added to these treaties if and when they reach the Senate floor.

10. Although the United States has presented itself to the international community as a champion of human rights, it does a disservice to the international community by attempting to stand as a role model without explicitly submitting itself to international standards and review mechanisms subject of universal acceptance. Despite its strong human rights record, the United States still suffers problems that the international human rights treaties address, including those stemming from racism, sexism and poverty.

The Law Group urges the Sub-Commission to:

(a) Encourage States to participation in acceptance of human rights instruments and implement the same on a national level;

(b) Call upon the United Kingdom in particular to implement the International Covenants already in force in Hong Kong, and upon the People's Republic of China to provide for full and effective implementation of the same following transfer of control of Hong Kong;

(c) Request the Secretary-General to offer advisory services in investigating past human rights abuses and implementing international standards on the national level in countries undergoing transition, such as Nepal; and

(d) Encourage those countries, and in particular the United States, which have signed but not ratified international human rights instruments, to exercise all diligence to ratify the same.

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HUMAN RIGHTS IN IRAN

Written statement submitted by the World Confederation of Labour, a non-governmental organization in consultative status (category I)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 August 1990]

1. In January 1990, a United Nations Special Representative travelled for the first time to Iran. The report later produced by him became a cause for concern by our organization and many other non-governmental organizations, human rights bodies and political parties around the world. Immediately after the publication of this report in February, a team of experts and researchers of the Iranian Resistance, under the supervision of the late Dr. Kazem Rajavi, began to prepare a detailed reply to this report. "Human Rights Betrayed" is the result of that research. Dr. Rajavi was assassinated on 24 April 1990, near his home outside Geneva, according to the Swiss judicial authorities by agents of the Iranian régime; the book was completed by the secretariat of the National Council of Resistance of Iran and under the supervision of Dr. Massoud Bani Sadr.

2. A relentless and sincere advocate of human rights, Dr. Rajavi, Professor of Law at Geneva University and former Iranian Ambassador to the United Nations, actively endeavoured to describe the ordeal and the suffering

of his people to the Commission on Human Rights and other international bodies, and urge them to monitor the human rights situation in Iran. He was truly a great martyr for the cause of human rights.

3. We believe that the book "Human Rights Betrayed", compiled by the prime victims of the violation of human rights in Iran, provides an objective, impartial and documented reply to the Special Representative's report.

4. We therefore submit this book for the attention of the Sub-Commission so that all its members and related bodies will be able to get a sound and proper view of the situation of human rights in Iran and pass their own careful judgement.